HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1719 OF 2004.
IN
SUIT NO.3573 OF 2001.

Udailal V.Jain & Anr. ...Plaintiffs.

V/s.

Seema Ramnarayan Agarwal. ...Defendant.

Mr.S.S.Joshi i/b Lalit Jain, for Plaintiffs.

Mr.A.R.Patil, for defendant.

CORAM: A.M.KHANWILKAR,J

DATE : JUNE 6, 2005

P.C. :-

1. Heard counsel for the parties. Perused the affidavits. This chamber summons seeks following reliefs :

(a) that the Court Receiver, High Court, Bombay be directed to terminate the Agency Agreement, if any, entered into between the Court Receiver and the Defendant;

(b) that the Court Receiver, High Court, Bombay be directed to take

possession of the said Shop No.15, Benzer Co-op. Housing Society Ltd., Lokhandwala Complex, Andheri(W), Bombay - 400 055 which is in possession of Defendant;

(c) that the Court Receiver, High Court, Bombay be directed to appoint the Plaintiffs as Agent of the Court Receiver;

(d) in the event this Hon'ble Court is not inclined to grant prayers (a) to (c) above that the Royalty payable by the Defendant to the Court Receiver, High Court, Bombay, in respect of the suit Shop be fixed at Rs.60,000/- per month;"

In substance, two aspects are pressed into service on behalf of the plaintiffs. In the first place, it is contended that the amount of Royalty fixed by the Court Receiver in the sum of Rs.10,000/- per month is inadequate. It is next contended that in any case, the defendant has failed to comply with the directions of the Court Receiver, for which reason, relief in terms

of prayer clause (a) to (c) ought to be granted to the plaintiffs.

2. I shall presently deal with the first aspect canvassed before this court. Indeed, premises in question are commercial premises and situated in prime locality. However, it cannot be ignored that the case of the defendant is that he is in possession of the said premises as tenant on monthly agreed rent of Rs.2000/- since 1989. That suit is pending in the Small Causes Court, Mumbai. It is however, not necessary to dwell upon that plea in the present proceedings.

3. Be that as it may, it is rightly submitted by the defendant that suit has been filed by the plaintiffs simplicitor for relief of possession. In such a situation, in my opinion, no fault can be found with the view taken by the Court Receiver that while fixing royalty, the court cannot fix an amount which would be excessive or result in profiteering. In other words, I see no reason to depart from the view taken by the Court Receiver in fixing the Royalty in respect of the disputed premises at the rate of Rs.10,000/- per month.

4. The order of the Court Receiver determining the

Royalty amount as Rs.10,000/- per month has not been challenged by the defendant. On the other hand, the defendant has acted upon the said order passed by the Court Receiver by depositing the amount of Rs.49,000/- in the office of the court Receiver today. There has been delay in the deposit of the said amount. That aspect can be considered independently.

5. Suffice it to observe that the amount determined by the Court Receiver towards Royalty of Rs.10,000/- per month is appropriate and no interference is warranted in that behalf.

6. In so far as, non-deposit of the Royalty amount determined by the Court Receiver by the defendant within time, as mentioned earlier, the defendant has already deposited the sum of Rs.49,000/- with the office of the court Receiver today, receipt of such deposit having been made, is produced by the counsel for the defendant. This amount would cover the royalty amount upto April, 2005. Counsel for the defendant undertakes on instructions of the defendant that the defendant will regularly deposit the sum of Rs.10,000/- in the Office of the Court Receiver till further order to be passed in this behalf by the appropriate court, as may be warranted in the fact situation of the case,

on or before 10th of every English Calender month without any default. That assurance is accepted.

7. The defendant agrees to deposit and therefore shall continue to deposit the above said amount, in addition to the deposit required to be made in terms of the order passed by the Small Causes Court, being sum of Rs.2,000/- in the treasury of that court.

8. Accordingly, this chamber summons ought to fail and the same is dismissed with the above observations.

9. Needless to observe that this arrangement will enure till further order to be passed in the notice of motion, taken out by the defendant, questioning the justness of the order, appointing Court Receiver, in respect of the suit premises.